

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lianne May	Team: Squad #07	CCRB Case #: 202105864	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/29/2020 4:21 PM	Location of Incident: 89 East 116th Street	18 Mo. SOL 6/29/2022	Precinct: 25		
Date/Time CV Reported Tue, 12/29/2020 9:10 PM	CV Reported At: IAB	How CV Reported: E-mail	Date/Time Received at CCRB Thu, 09/30/2021 12:59 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Edgar Espinal	01190	963503	025 PCT
2. PO Briana Juliano	01555	959717	025 PCT
3. PO Kevin Weber	26421	948439	ID SECT
4. PO Marc Brigantti	02369	963412	025 PCT
5. PO Nicholas Mcquail	24018	963347	INT FIO PRG
6. PO Matthew Sichel	01884	966338	025 PCT
7. LT SA James Lombardi	00000	897890	025 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO Edgar Espinal	Abuse: Police Officer Edgar Espinal threatened § 87(2)(b) with the use of force.	
B . PO Kevin Weber	Force: Police Officer Kevin Weber used physical force against § 87(2)(b)	
C . PO Kevin Weber	Abuse: Police Officer Kevin Weber threatened to arrest § 87(2)(b)	
D . PO Briana Juliano	Abuse: Police Officer Briana Juliano threatened to arrest § 87(2)(b)	
E . PO Edgar Espinal	Force: Police Officer Edgar Espinal used physical force against § 87(2)(b)	
F . PO Briana Juliano	Force: Police Officer Briana Juliano used physical force against § 87(2)(b)	
G . PO Kevin Weber	Force: Police Officer Kevin Weber used physical force against § 87(2)(b)	
H . PO Marc Brigantti	Force: Police Officer Marc Brigantti used physical force against § 87(2)(b)	
I . PO Marc Brigantti	Discourtesy: Police Officer Marc Brigantti spoke discourteously to § 87(2)(b)	
J . PO Nicholas Mcquail	Force: Police Officer Nicholas Mcquail used physical force against § 87(2)(b)	
K . PO Matthew Sichel	Force: Police Officer Matthew Sichel used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
L . PO Nicholas Mcquail	Abuse: Police Officer Nicholas Mcquail threatened § 87(2)(b) with the use of force.	
M . LT SA James Lombardi	Abuse: Lieutenant James Lombardi threatened § 87(2)(b) with the use of force.	
N . LT SA James Lombardi	Discourtesy: Lieutenant James Lombardi spoke discourteously to § 87(2)(b)	

### Case Summary

On December 29, 2020, the Deputy Commissioner of Public Information Office filed the following complaint from a Twitter video (BR1) with the NYPD Internal Affairs Bureau (IAB) (BR2). IAB forwarded this case to the CCRB on September 24, 2021 and it was received at the CCRB on September 30, 2021.

On December 29, 2020, at 4:21PM, § 87(2)(b) who was about 8 months pregnant, was with § 87(2)(b) inside of 89 East 116 Street, a Western Union establishment, in Manhattan. When officers arrested § 87(2)(b) for breaking a machine in the establishment, § 87(2)(b) dropped his identification. § 87(2)(b) picked it up and refused to give it to the officers. § 87(2)(b) refused to be handcuffed and Police Officer Edgar Espinal of the 25 Precinct threatened to tase § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g)). When § 87(2)(b) continually refused to provide § 87(2)(b) ID, Police Officer Kevin Weber, of the 25 Precinct at the time of the incident, held onto § 87(2)(b) hood (**Allegation B: Force**, § 87(2)(g)). PO Weber and Police Officer Briana Juliano of the 25 Precinct then threatened to arrest § 87(2)(b) for not giving them the ID (**Allegations C and D: Abuse of Authority**, § 87(2)(g)). PO Espinal, PO Juliano, PO Weber and Police Officer Marc Brigantti of the 25 Precinct held § 87(2)(b) against the wall as he resisted (**Allegations E-H: Force**, § 87(2)(g)). PO Brigantti told § 87(2)(b) to not “fucking headbutt” the officers (**Allegation I: Discourtesy**, § 87(2)(g)). Police Officer Nicholas McQuail and Police Officer Matthew Sichel, both of the 25 Precinct at the time of the incident, both used force to first drag and then push § 87(2)(b) out of the establishment and caused her to suffer a seizure (**Allegations J and K: Force**, § 87(2)(g)). PO McQuail and Lieutenant James Lombardi of the 25 Precinct both threatened to tase § 87(2)(b) while he was in handcuffs (**Allegations L and M: Abuse of Authority**, § 87(2)(g)). Lt. Lombardi then told § 87(2)(b) to “stop this shit” (**Allegation N: Discourtesy**, § 87(2)(g)).

The investigation received 29 BWC videos (BR3), bystander-filmed video IAB provided (BR4), and three videos § 87(2)(b) provided (BR5; BR6; BR7).

### Findings and Recommendations

**Allegation A- Abuse of Authority: Police Officer EDGAR ESPINAL threatened § 87(2)(b) with the use of force.**

**Allegation B- Force: Police Officer KEVIN WEBER used physical force against § 87(2)(b).**

**Allegation C- Abuse of Authority: Police Officer KEVIN WEBER threatened to arrest § 87(2)(b).**

**Allegation D- Abuse of Authority: Police Officer BRIANA JULIANO threatened to arrest § 87(2)(b).**

**Allegation E- Force: Police Officer EDGAR ESPINAL used physical force against § 87(2)(b).**

**Allegation F- Force: Police Officer BRIANA JULIANO used physical force against § 87(2)(b).**

**Allegation G- Force: Police Officer KEVIN WEBER used physical force against § 87(2)(b).**

**Allegation H- Force: Police Officer MARC BRIGANTTI used physical force against § 87(2)(b).**

**Allegation I- Discourtesy: Police Officer MARC BRIGANTTI spoke discourteously to § 87(2)(b).**

On December 29, 2020, at 4:21PM, § 87(2)(b) who was pregnant and due to give birth in January 2021, and § 87(2)(b) were inside of 89 East 116 Street, a Western Union money transferring establishment, in Manhattan. § 87(2)(b) testified to the CCRB that § 87(2)(b) had

broken a cash machine out of frustration. PO Espinal, PO Juliano, PO Weber and PO Brigantti arrived and arrested § 87(2)(b). PO Weber told § 87(2)(b) to “get out” and then grabbed the hood of § 87(2)(b) coat, causing her to hit the back of her head on the door and go unconscious. She also hit her stomach on the floor. PO Juliano told § 87(2)(b) that they were arresting § 87(2)(b) and that § 87(2)(b) could also get arrested for stopping the officers from arresting § 87(2)(b). PO Espinal, PO Weber, and PO Brigantti pushed § 87(2)(b) into a corner of the establishment and punched his face, ribs, and forehead against the wall (BR8).

§ 87(2)(b)

§ 87(2)(b) was arrested under Arrest # § 87(2)(b) for assaulting officers and criminal mischief (BR10).

The IAB Log submitted noted that § 87(2)(b) was arrested for “OGA and resisting” § 87(2)(b).

Threat, Resistance, and Injury (TRI) reports document that PO Brigantti, PO Espinal, PO Juliano, and PO Weber were the victims of § 87(2)(b) force and the officers used wrestling and grappling to overcome § 87(2)(b) aggression. Another TRI report notes that PO Weber wrestled and grappled with § 87(2)(b) to overcome her resistance (BR12).

In PO Espinal’s BWC (BR13) from 00:00-1:48, PO Espinal, PO Weber, PO Brigantti, and PO Juliano talk with § 87(2)(b) standing near a cash withdrawal machine. § 87(2)(b) enters at 00:42. § 87(2)(b) complies with officers and puts his hands behind his back to be handcuffed. At 1:09, PO Espinal, who stands behind § 87(2)(b) and handcuffs him, tells § 87(2)(b) to get his hand out of his pocket and § 87(2)(b) states he is getting his ID. PO Espinal states they will get his ID. § 87(2)(b) and PO Juliano argue over the ID and § 87(2)(b) pulls his hand from PO Espinal trying to handcuff him and then pulls his body away from PO Brigantti and PO Espinal. PO Weber comes over to help put § 87(2)(b) hands behind him and PO Espinal tells him to put his hands behind his back or he will be tased. § 87(2)(b) tells PO Espinal to not touch his ID. § 87(2)(b) continues to yell that § 87(2)(b) is pregnant and not to touch her while PO Espinal and PO Brigantti restrain him and move him further away from her.

In PO Juliano’s BWC (BR14) from 1:05-1:46, PO Juliano stands in front of § 87(2)(b) and § 87(2)(b). As PO Espinal handcuffs § 87(2)(b), § 87(2)(b) gives his phone to § 87(2)(b) and drops his ID on the ground. § 87(2)(b) steps on the ID; PO Juliano tells § 87(2)(b) that his ID comes with them and reaches down to get it but does not get it. § 87(2)(b) states, “excuse me, I’m pregnant, don’t touch me.” PO Juliano tells § 87(2)(b) and § 87(2)(b) multiple times to give them § 87(2)(b) ID and § 87(2)(b) refuses, stating repeatedly that she is pregnant and that § 87(2)(b) is her baby’s father. PO Juliano states that PO Juliano is still taking his ID. PO Juliano and § 87(2)(b) argue about providing § 87(2)(b) ID and § 87(2)(b) bends down to get it.

PO Juliano’s BWC (BR14) from 1:46-5:42, shows § 87(2)(b) still leaning forward and bending down to get the ID after officers continue to tell her to just provide them with the ID. § 87(2)(b) tells officers not to touch her and PO Juliano tells her to give them the ID. PO Weber tells § 87(2)(b) to back up twice and she does not respond or comply as § 87(2)(b) bends down to pick up the ID. PO Weber grabs and then holds onto § 87(2)(b) hood as she had already squatted down, and she sits backward to the ground slowly. PO Weber, while holding her hood, uses force to move § 87(2)(b) from her kneeling position onto her back on the ground. § 87(2)(b) rolls onto

her knees and stands up while other officers are still restraining § 87(2)(b) who tells her to “call the cops.” § 87(2)(b) yells inaudibly while gesturing at officers and puts the ID in her pocket. PO Juliano asks her again if she can give them the ID. § 87(2)(b) yells at her to not give them the ID. PO Weber asks her if she wants to go to jail too. PO Juliano radios for a supervisor and § 87(2)(b) alleged PO Weber slammed her. PO Weber denies this by telling § 87(2)(b) that it’s all on camera. Both PO Juliano and PO Weber tell § 87(2)(b) she will be arrested for obstructing an investigation by refusing to provide the ID. At 3:04, PO Weber and PO Juliano grab § 87(2)(b) arms. § 87(2)(b) then tells her to give them the ID. § 87(2)(b) pulls away from PO Juliano and PO Weber and stands next to the wall gesturing at the officers. The officers do not try to handcuff her again. PO Juliano tells everyone that § 87(2)(b) only needs to give the ID. § 87(2)(b) then begins to make a call on her phone. At 4:15, PO Espinal and PO Brigantti push § 87(2)(b) into a corner and PO Juliano assists. PO Brigantti tells § 87(2)(b) not to “fucking headbutt him.”

In PO Brigantti’s BWC (BR15), from 2:23-3:50, PO Brigantti pushes § 87(2)(b) against the wall and tells him to not to “fucking headbutt him” multiple times. PO Brigantti brings § 87(2)(b) outside to a marked SUV. Officers put him into an RMP.

Patrol Guide Procedure 221-08 states that conducted electrical weapons (CEW) should only be used against persons who are actively resisting, exhibiting active aggression (BR16).

Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances...When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force (BR17).

As per NY Penal Law 195.05, a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved (BR18).

In DCT Case #79627/04, NYPD Disciplinary decisions have consistently concluded that when an officer uses an impolite word during a street encounter where that officer is attempting to maintain control of the situation, the police officer’s verbal slip does not rise to the level of actionable misconduct (BR19).

According to Patrol Guide Procedure 200-02, the Department is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect (BR20).

§ 87(2)(b) while at first compliant with the officers, then began to resist their attempts to get his ID and talk to § 87(2)(b) by pulling his arms and body away from PO Espinal in addition to verbally refusing to comply and instructing § 87(2)(b) to not comply. § 87(2)(g)

§ 87(2)(b) In addition, § 87(2)(b) became more resistant by pulling away from officers and headbutting them when PO Juliano and PO Weber were talking with § 87(2)(b) § 87(2)(g)



§ 87(2)(g)

The BWC shows that § 87(2)(b) obstructed § 87(2)(b) arrest by picking up § 87(2)(b) ID off the ground and repeatedly refusing to provide § 87(2)(b) ID to the officers. PO Weber and PO Juliano tried to deescalate by telling § 87(2)(b) that she only needs to provide the ID and explained that they needed it to identify § 87(2)(b) or she would get arrested for obstructing them. When she continually refused, PO Weber grabbed her hood, but § 87(2)(b) lowered herself to the ground. On BWC, § 87(2)(b) alleged that PO Weber “slammed” her to the ground but PO Weber denies this on BWC and the footage shows that this never happened. § 87(2)(g)

**Allegation J- Force: Police Officer NICHOLAS MCQUAIL used physical force against**

§ 87(2)(b)

**Allegation K- Force: Police Officer MATTHEW SICHEL used physical force against § 87(2)(b)**

§ 87(2)(b) explained that after PO Weber pulled the hood of § 87(2)(b) coat, § 87(2)(b) alleged that she was shaking, and PO McQuail then dragged her outside with her hood. § 87(2)(b) explained that she had a seizure outside and saw videos of this that other people showed her after the incident. § 87(2)(b) was then unconscious but still heard other people calling for an ambulance and telling the officers she was pregnant. She went to § 87(2)(b) Hospital. § 87(2)(b) never had a seizure before (BR8).

In PO Juliano’s BWC (BR14) from 4:49-5:00 and in PO Espinal’s BWC (IA#43) from 4:30-5:11, § 87(2)(b) is heard yelling in the background to the officers to “calm down.” PO Weber had grabbed § 87(2)(b) hood three minutes and one second before this. PO Weber, who is attempting to restrain § 87(2)(b) puts his arm out straight to keep § 87(2)(b) back while § 87(2)(b) attempts to go to § 87(2)(b). PO Weber tells § 87(2)(b) to “back it up. Back up. Back it up, back up” as § 87(2)(b) yells at her to “go out the door. Please, go out the door” and § 87(2)(b) still stands there. PO Weber and PO Juliano assist other officers in still restraining § 87(2)(b) when PO Sichel arrives. PO Juliano tells them to “get her § 87(2)(b) out” multiple times while telling the other officers that § 87(2)(b) is trying to headbutt and § 87(2)(b) is “all over the place.” § 87(2)(b) continually yells at § 87(2)(b) to go outside and officers also tell her to go outside and she does not comply. PO Weber tells the officers too that § 87(2)(b) needs to leave. In the background, PO McQuail then drags § 87(2)(b) on the floor out the door by her arm.

In the second video that § 87(2)(b) provided (BR6) from 00:00-00:26, an officer identified as PO McQuail pulls § 87(2)(b) out of the door and she gets up immediately. PO McQuail goes back into the establishment. At 00:15, an officer identified as PO Sichel pushes her out of a different door and she stumbles back and goes back inside. PO Sichel pushes her again and she falls onto the ground and begins to have a seizure.

In Police Officer Amarjit Singh’s BWC (BR21) from 00:39-1:00, PO McQuail drags § 87(2)(b) out the door by her arms and leaves. PO Sichel then pushes her outside twice.

In PO McQuail’s BWC (BR22) from 00:54-1:54, PO McQuail arrives, and PO Weber is talking to § 87(2)(b) who is on her phone even as officers are gesturing to her to leave. PO McQuail asks PO Weber if he wants § 87(2)(b) outside, and PO Weber approves. PO McQuail states, “outside,

let's go, outside" as he approaches her and grabs § 87(2)(b) left wrist and jacket. § 87(2)(b) is agitated and yells in the background telling her to go outside and questions why they are dragging a pregnant woman. Officers restrain him against the wall. PO McQuail pushes § 87(2)(b) arm forward and § 87(2)(b) squats down so her torso is leaning forward. PO Weber holds her right arm. PO McQuail states, "outside" again and § 87(2)(b) is sitting on the ground while officers still hold her jacket at the arms. § 87(2)(b) then lays down on her back on the floor of the establishment and PO Weber lets go but PO McQuail holds onto her jacket. It cannot be determined if § 87(2)(b) sits down on her own or if the officers are propelling her down. Her legs are bent. PO McQuail, while holding onto her left wrist and jacket, pulls and drags § 87(2)(b) out on her back. As they exit the threshold, § 87(2)(b) rolls to her left side and grabs the doorframe with her right hand. PO McQuail has been continually telling her to go outside and he then states, "I said get outside. That's the last time I'm telling you that. Get outside." A bystander outside states, "why are you grabbing her like that? She's a baby's mother. What the fuck is wrong with you?" As § 87(2)(b) is fully out of the establishment, two other officers hold onto her. She immediately gets up as PO McQuail and the officers let her go. PO McQuail goes back inside and more officers are restraining § 87(2)(b) in the corner and he continues to be agitated. PO McQuail then yells "outside" again as PO Sichel pushes § 87(2)(b) out the door again. Bystanders outside yell that § 87(2)(b) is pregnant, and PO McQuail states she is about to go to jail. Other officers walk § 87(2)(b) out in handcuffs. They walk past bystanders who surround § 87(2)(b) on the ground and bystanders yell she needs an ambulance.

In PO Sichel's (BR23) BWC from 00:00-00:09, he arrives and pushes § 87(2)(b) out the door and returns inside.

In PO Alvarez's BWC (BR24), from 00:30-9:10, § 87(2)(b) is on the ground moving her limbs and appears to be hyperventilating. Bystanders tell her that an officer dragged her outside. PO Alvarez tells bystanders that an ambulance is coming and asks § 87(2)(b) for her name. § 87(2)(b) appears to be hyperventilating. EMS arrive and PO Alvarez tells them that she is pregnant and had a seizure.

In two different TRI reports, PO McQuail and PO Sichel noted they both used force against and were the victims of force from § 87(2)(b) (BR12).

PO McQuail testified to the CCRB that PO McQuail did not ever learn that § 87(2)(b) was pregnant. PO McQuail knew § 87(2)(b) and § 87(2)(b) from previous violent interactions and so knew that they rile each other up and they asked PO Weber if she needed to be taken outside. PO McQuail explained that he grabbed her arm and dragged her outside the door because she was not being compliant and he then went back into the store to help the officers struggling with § 87(2)(b). He never tried to stand § 87(2)(b) up because she needed to be removed as quickly as possible. As he dragged her out, she hit him (BR25).

PO Sichel explained to the CCRB that § 87(2)(b) after being dragged out, returned to the establishment again. § 87(2)(b) was escalating the situation by yelling and talking to § 87(2)(b) while trying to get officers off of him. § 87(2)(b) was also trying get into the mix of the officers. PO Sichel pushed § 87(2)(b) the first time and she tried to come back in. PO Sichel "shoved" her again because she was still trying to get into the store and pushed her for everyone's safety and to remove her from the escalating situation. § 87(2)(b) fell on her back, but he did not remember specifically how she fell. After a few moments, he saw § 87(2)(b) fall and then looked again and saw she was having a seizure about 30 seconds to a minute after he pushed her. § 87(2)(b) had a seizure, and they called her an ambulance a few minutes later. Lt. Lombardi called the ambulance before PO Sichel (BR26).

Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances (BR17).

It is clear that PO Sichel and PO McQuail arrived to a chaotic scene where officers were trying to restrain a resisting § 87(2)(b). PO McQuail denied knowing that § 87(2)(b) was pregnant. While § 87(2)(b) was not specifically interfering in § 87(2)(b) arrest at the time they arrived, PO McQuail knew her, and PO Weber agreed that she should be removed from the scene. § 87(2)(b) immediately resisted the officers attempts to remove her. § 87(2)(g)

§ 87(2)(b) Rather than trying to effectively gain control of § 87(2)(b) PO McQuail's action of throwing her outside the store and then immediately walking away from her appears to be out of frustration and escalated an already tense encounter. Similarly, § 87(2)(b) was again attempting to interfere with § 87(2)(b) arrest when she tried to reenter into the establishment. § 87(2)(g)

§ 87(2)(b) there were multiple officers already dealing with § 87(2)(b) § 87(2)(g)

**Allegation L- Abuse of Authority: Police Officer NICHOLAS MCQUAIL threatened § 87(2)(b) with the use of force.**

**Allegation M- Abuse of Authority: Lieutenant JAMES LOMBARDI threatened § 87(2)(b) with the use of force.**

**Allegation N- Discourtesy: Lieutenant JAMES LOMBARDI spoke discourteously to § 87(2)(b).**

In PO McQuail's BWC (BR22) from 03:17-3:35, PO McQuail opens up the RMP door with § 87(2)(b) laying on the seat. PO McQuail states, "yo, yo, listen to me. You kick the door, we're going to tase you. You hear me? I don't care that you have handcuffs on. Look at me, look at me. Enough. Stop."

In Lt. Lombardi's BWC from 2:15-2:48 (BR27), Lt. Lombardi records PO Espinal telling § 87(2)(b) he will be tased while pointing a taser at him and then immediately authorizes PO Espinal's statement because Lt. Lombardi then tells § 87(2)(b) that he will be tased and to "stop this shit." Lt. Lombardi does not say anything at PO Espinal about his threat. Lt. Lombardi then tells the operator of the vehicle that if § 87(2)(b) kicks the windows, to "stop this thing and tase him." The operator states, "you got it."

PO McQuail testified to the CCRB, both before and after watching his BWC from the same segment above, that he never remembered threatening to tase § 87(2)(b). PO McQuail explained that he would have been allowed to tase § 87(2)(b) even though was in handcuffs because his NYPD training taught him that he can tase a restrained person under exigent circumstances or if they present a harm to themselves or others. In this case, § 87(2)(b) was a harm to himself and was damaging property by kicking the car windows. § 87(2)(b) could have broken the window, rolled in broken glass, and hit his head on the metal partition. PO McQuail threatened him for his safety. PO McQuail said he could have told § 87(2)(b) that he did not care if he had handcuffs on because he was trying to get his attention by raising his voice and that it had worked before with § 87(2)(b) in other incidents. His threat of force was a way to not use force and gain compliance (BR25).



Lt. Lombardi explained that he saw the window bowing from § 87(2)(b) kicking it and he ordered officers to open the car door. Lt. Lombardi told § 87(2)(b) that he would be tased as a means of compliance only. Lt. Lombardi was never going to use his taser because they are prohibited from ever using force against a handcuffed subject. They needed § 87(2)(b) to comply because civilians frequently kick out the windows and hurt officers and themselves by tearing skin with the glass shards. Lt. Lombardi told the operator of the vehicle to stop and tase § 87(2)(b) only so that § 87(2)(b) could hear him say that, but the operator and Lt. Lombardi knew Lt. Lombardi was not serious because officers can never tase a restrained person. Lt. Lombardi never heard any other officers threaten to use or point their tasers at § 87(2)(b) while handcuffed and this would have not been allowed. Lt. Lombardi never authorized any officers to verbally point or threaten to use a taser against § 87(2)(b). When shown his BWC from 1:55-2:34, Lt. Lombardi saw PO Espinal point and verbally threaten to use his taser. Lt. Lombardi maintained that he did not remember or authorize this on scene. In all his statements about tasing, Lt. Lombardi only used them as empty threats and never to actually warn § 87(2)(b) they would tase him (BR28).

Patrol Guide 221-01 regarding rules of force states that "MOS shall not use any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape, or to overcome active physical resistance of assault (BR17).

Patrol Guide Procedure 221-08 regarding CEW use states that a CEW should never be used in CARTRIDGE or DRIVE STUN mode on a rear-cuffed prisoner (BR16).

In DCT Case #79627/04, NYPD Disciplinary decisions have consistently concluded that when an officer uses an impolite word during a street encounter where that officer is attempting to maintain control of the situation, the police officer's verbal slip does not rise to the level of actionable misconduct (BR19).

According to Patrol Guide Procedure 200-02, the Department is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect (BR20).

As per the Patrol Guide, are told not to use force or taser on a handcuffed or restrained person, unless necessary to prevent injury, escape or assault. § 87(2)(g)

§ 87(2)(b) Lt. Lombardi acknowledged that officers are prohibited from using force on a handcuffed person, § 87(2)(g)

The BWC and NYPD testimony demonstrated that this was a chaotic situation in which § 87(2)(b) still needed to be controlled. § 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR29).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR30).
- Police Officer Marc Briganti has been a member-of-service for five years and this is the first CCRB complaint to which he has been a subject (BR31).
- Police Officer Edgar Espinal has been a member of service for five years and has been a

(g) [REDACTED]

- Mediation, Civil, and Criminal Histories**
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- As of May 31, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (BR40).

Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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